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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,860	03/09/2004	Chung P. Park	44306B	2431

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THE DOW CHEMICAL COMPANY
INTELLECTUAL PROPERTY SECTION
P. O. BOX 1967
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EXAMINER

ZEMEL, IRINA SOPJIA

ART UNIT PAPER NUMBER

1711

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,860

Applicant(s)

PARK, CHUNG P.

Examiner

Irina S. Zemel

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,9-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 is/are allowed.
- 6) ☒ Claim(s) 1,5,7,9,10 and 12 is/are rejected.
- 7) ☐ Claim(s) 2-4, 13-15 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Rejection of claims under 35 USC 112, first paragraph is withdrawn in view of the amendment filed by the applicants on 12-22-2004 and limiting subject matter of all pending claims to ethylenic polymers or polypropylene.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, and 5, 7, 9, 10, 12 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,251,319 to Tusim et al., (hereinafter ("Tusim")).

The rejection of claims stands as per reasons set forth in the previous office action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tisum in combination with Encyclopedia of Polymer Science and Engineering, Cellular materials (hereinafter "Encyclopedia").

The rejection of claims stands as per reasons set forth in the previous office action.

Response to Arguments

Applicant's arguments filed December 22, 2004 have been fully considered but they are not persuasive. The applicants arguments regarding the Tusim reference are focused on the major polymer of the foams disclosed by Tusim. While the examiner agrees that the foams disclosed in the reference require some amount of polypropylene material, the claimed invention does not preclude polypropylene from being present in the claimed foams. All the claimed invention requires that some portion of the foam is based on ethylenic polymer. In the blends disclosed in the reference, such as, for example, in examples 6-8, 25 % of the polymer is polyethylene, thus, inherently meeting the requirement of ethylenic polymer foam limitation of claim 1. Furthermore, the specification does not provide any definition of ethylenic polymer. All the specification states is that "preferred thermoplastic resins also include olefinic polymers. Preferred olefinic polymers include ethylenic polymers, copolymers and blends thereof." Since no definition for "ethylenic polymer" is provided, it is reasonable to interpret that any polymer containing ethylene in some amount, either copolymerized or blended with other components falls within the claimed ethylenic polymer limitation. This position is further supported by the fact that claim 7 expressly includes blends and copolymers within the genus of the claimed ethylenic polymers. Moreover, since nowhere in the specification the acceptable or suitable copolymers or blends are defined in terms of the amount of ethylene, it is reasonable to interpret the claimed language as encompassing any amount of ethylene in a suitable blend. Note that claim 1 does not have any numerical limitation to the amount of ethylene in the claimed ethylenic polymer either.

Thus, blends with other polymers, such as polypropylene, expressly disclosed by Tusim fall within the claimed limitations.

Thus, the invention as claimed in claims 1, 5, 7, 9, 10,12, and 17, thus are unpatentable over the disclosures of cited references.

Allowable Subject Matter

Claim 16 is allowed.

Claims 2-4, 13 -15 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

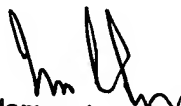
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ISZ


James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700